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# THE DRAGON LOOKS NORTH: THE ARCTIC, CHINA, AND THE LAW OF THE SEA BRING PROSPECTS FOR NEW OPPORTUNITIES AND NEW PERILS

*Peter Rosene\**

## I. INTRODUCTION

**T**he dream of so many during the Age of Exploration is becoming a reality. The Northwest Passage above North America and the Northern Sea Route above Eurasia are slowly becoming navigable waterways due to global climate change.<sup>1</sup> The Arctic Ocean is thawing out. While many find this to be a barometer indicating yet another casualty of global warming, some have found a silver lining to this black cloud. As the ice recedes, economic opportunities begin to thaw. The first major development is access to new shipping routes above Eurasia and North America.<sup>2</sup> Currently, these routes are only passable during the summer months, but circumnavigation is predicted to become more and more accessible over the course of this century until the northern routes are fully navigable year round.<sup>3</sup> This has the potential to drastically shorten shipping routes by thousands of miles and cut transportation costs by millions of dollars.<sup>4</sup>

But perhaps even more significant are the receding ice sheets revealing vast stores of natural resources that were previously inaccessible due to year round ice cover.<sup>5</sup> New fisheries and billions of barrels of untapped hydrocarbon reserves lie beneath the rapidly thawing ice, and if history has taught us one thing, international powers will not let new worlds slip away without taking their cut.<sup>6</sup> As can be expected, this has created somewhat of an international conundrum as to who has the rights to what and how resources should be allocated. It would not be the first time that the prospect

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<sup>1</sup> Scott G. Borgerson, *Arctic Meltdown: The Economic and Security Implications of Global Warming*, 87 FOREIGN AFFAIRS 63, 63 (2008).

<sup>2</sup> *Id.* at 69.

<sup>3</sup> *Id.* at 66-67.

<sup>4</sup> *Id.* at 69; Arthur Guschin, *Understanding China's Arctic Policies*, THE DIPLOMAT (Nov. 14, 2013), <http://thediplomat.com/2013/11/understanding-chinas-arctic-policies/>.

<sup>5</sup> *90 Billion Barrels of Oil and 1,670 Trillion Cubic Feet of Natural Gas Assessed in the Arctic*, U.S. GEOLOGICAL SURVEY (July 23, 2008).

<sup>6</sup> *Id.*; Guschin, *supra* note 4; Borgerson, *supra* note 1, at 67.

of controlling vast amounts of resources has led to saber rattling and open hostility.<sup>7</sup>

Today, nations operate through bilateral and multilateral agreements largely facilitated by international governance structures and norms. However, as the Arctic becomes more relevant due to climate change concerns and economic development, nations have found themselves in a quandary as to what law governs. Do the so-called “Arctic nations” – i.e. Russia, Canada, Finland, Sweden, Norway, Denmark, Iceland, and the United States – have a superior, exclusive title to the region, and if so, what determines their slice of the Arctic pie? If not, does ownership rely on whomever is the first in time is the first in right? The United Nations Convention on the Law of the Sea (“UNCLOS”) and the Arctic Council could provide answers to these issues, but neither of these institutions have the teeth necessary to substantially govern the region’s economic development and environmental preservation.

While there are no conclusive answers to these questions, there can be no doubt that the Arctic offers tantalizing prospects for many, particularly China. China has the fastest growing economy in the world and ravenously consumes more natural resources than any other nation to fuel its booming – albeit slowing – national economy.<sup>8</sup> However, unlike other global powers like the United States and Russia, China shares neither a geographical border nor an ancestral link to the Arctic region. Over the past twenty years, these two very assertions have propped up China’s aggressive stance in the South and East China Seas.<sup>9</sup> Here, China has used cultural and geographic ties to challenge claims against many of its neighbors for tiny shoals and islands boasting substantial mineral reserves.<sup>10</sup> Now, with the thawing of the Arctic Ocean, China appears to be turning its attention north by sending shipping tankers and research vessels above the Arctic Circle, as well as building icebreaker ships to facilitate China’s future voyages through the region.<sup>11</sup>

China’s need for resources and its hostile conduct at its borders have led scholars to speculate about Beijing’s true intentions in the Arctic. This Note will attempt to analyze issues facing China in the context of their Arctic

<sup>7</sup> See *China’s Territorial Disputes*, THE ECONOMIST (Aug. 27, 2014), <http://www.economist.com/blogs/graphicdetail/2014/08/daily-chart-15>.

<sup>8</sup> John Lee, *A Slowing Chinese Economy Could Spell Fiscal Crisis*, FORBES (Jan. 5, 2016, 7:30 AM), <http://www.forbes.com/sites/rcalspin/2016/01/05/slowng-chinese-economy-coming-fiscal-crisis/#3e3913fc2d57>.

<sup>9</sup> THE ECONOMIST, *supra* note 7.

<sup>10</sup> *Id.*

<sup>11</sup> *China Is Making a Huge Arctic Play – Even Though It Has No Claim*, THE ECONOMIST (July 13, 2014, 11:06 AM), <http://www.businessinsider.com/china-is-making-a-huge-arctic-play-2014-7>.

policies by first focusing on the environmental and legal ramifications of the melting Arctic. Second, we will look at indications as to why and how China might pursue its Arctic aspirations by analyzing its economic motivations, current political entanglements with its neighbors in the South and East China Seas, and how China reacts to possible constraints brought on by international laws. Finally, we will discuss possible legal structures and what the United States as the undisputed international hegemon can do in order to curb aggressive behavior in the region by China.

## II. BACKGROUND: A DEVASTATED ENVIRONMENT PRESENTING HOT ECONOMIC PROSPECTS

### *A. The View Above the Arctic Circle*

The Arctic ice sheet is melting rapidly.<sup>12</sup> In December 2015, The National Snow and Ice Data Center estimated that the Arctic Ocean is melting at an average rate of 4.7 percent per decade.<sup>13</sup> This represents a linear decline of the Arctic ice sheet from 1981 where the Arctic's year round average ice coverage was roughly 4.23 million square miles, to this year's approximately 3.9 million square mile coverage.<sup>14</sup> Additionally, average temperatures between 2014 and 2015 were also alarmingly high.<sup>15</sup> Temperatures above the Arctic Circle in winter usually average a frigid -30 degrees Fahrenheit below zero; but it is predicted that temperatures will peak above freezing in January 2016.<sup>16</sup> Between 2004 and 2005, the Arctic lost nearly "14 percent of its perennial ice – the dense, thick ice" that makes shipping lanes impassable.<sup>17</sup>

This paints a grim picture for what is to come in the future, but it is the summer months that present the most visible and alarming effects of global climate change.<sup>18</sup> For the first time in modern history, maritime vessels can circumnavigate the globe above the Arctic Circle during the summer by passing through the Northern Sea Route above Eurasia and the Northwest

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<sup>12</sup> See generally *Arctic Sea Ice and News Analysis*, NAT'L SNOW & ICE DATA CTR. (Jan. 5, 2014), available at <http://nsidc.org/arcticseaicenews/>; see also Borgerson, *supra* note 1, at 66-67.

<sup>13</sup> Jane Beitler, *Arctic Sea Ice News and Analysis*, NAT'L SNOW & ICE DATA CTR. (Dec. 1, 2015), <http://nsidc.org/arcticseaicenews/2015/12/a-variable-rate-of-ice-growth/>.

<sup>14</sup> *Id.*

<sup>15</sup> J. Overland et al., *Surface Air Temperature*, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (Nov. 17, 2015), [http://www.arctic.noaa.gov/reportcard/air\\_temperature.html](http://www.arctic.noaa.gov/reportcard/air_temperature.html).

<sup>16</sup> Patrick Hogan, *A Warm Winter Storm Is Bringing Bizarre Temperatures to the North Pole*, FUSION (Dec. 30, 2015, 11:11 AM), <http://fusion.net/story/250353/el-nino-north-pole-warm/>; see also NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, *supra* note 15.

<sup>17</sup> Borgerson, *supra* note 1, at 66.

<sup>18</sup> See *id.* at 63, 66-67.

Passage above North America.<sup>19</sup> In the summer of 2008, the Arctic lost one million square miles of ice cover reducing it to about half its size at the same time 50 years earlier.<sup>20</sup> By the end of this century, it is predicted that the Arctic could be completely ice-free during the summer.<sup>21</sup>

Global commerce, however, is willing to take full advantage of the new pathway. Shipping through the Northern Sea Route and Northwest Passage has increased every year with a 53 percent increase between 2011 and 2012, alone.<sup>22</sup> Before, if a company were to ship goods from Seattle to the Netherlands, the ship would have to travel down to the Panama Canal and then on to Europe for a trip of 10,220 miles, and a voyage from Japan to the Netherlands would be even greater.<sup>23</sup> There, the freighter would need to travel south through the Strait of Malacca, to the Suez Canal, and then around continental Europe for a distance of 12,885 miles.<sup>24</sup> The northern routes cut those voyages by thousands of nautical miles with a distance of roughly 7,000 miles from Seattle to the Netherlands and only 6,500 miles between Japan and the Netherlands.<sup>25</sup>

The cumulative amount of money saved on fuel, shipping costs, and man-hours at sea would be astronomical, and this sentiment will no doubt be reflected in the continually increasing use of those passages by maritime nations. This is just one of the reasons why China is taking a hard look at the region along with the prospect of economic security by insulating itself from United States control over the Suez Canal.<sup>26</sup> In fact, Chinese analysts predict that between 5 and 15 percent of their shipping will be done over the Northern Sea Route by 2020.<sup>27</sup> However, what makes the Arctic so valuable (and dangerous) is the wealth of resources locked beneath its ice.

### *B. The Scramble for the Arctic*

“Global warming has given birth to a new scramble for territory and resources” in the Arctic.<sup>28</sup> For China as well as the Arctic nations, the North Pole represents a vast wealth of untapped resources. They have not been

<sup>19</sup> *Id.* at 68, 69.

<sup>20</sup> *Id.* at 63.

<sup>21</sup> *Id.* at 66.

<sup>22</sup> Guschin, *supra* note 4.

<sup>23</sup> SEARATES.COM, <https://www.searates.com/reference/portdistance/?B=10319&E=11175&> (search for “Seattle” in the “Origin City” and “Netherlands” in the “Destination City”) (last visited Apr. 22, 2015); see also Borgerson, *supra* note 1, at 69.

<sup>24</sup> SEARATES.COM, *supra* note 23 (search for “Netherlands” in the “Origin City” and “Japan” in the “Destination City”); see also Borgerson, *supra* note 1, at 69.

<sup>25</sup> Borgerson, *supra* note 1, at 69.

<sup>26</sup> Guschin, *supra* note 4.

<sup>27</sup> *Id.*

<sup>28</sup> Borgerson, *supra* note 1, at 63.

legally claimed by any nation outside their respective exclusive economic zones (“EEZ”), or 200 miles extending off their shores, and there is no substantial preexisting framework to indicate how the resources are to be extracted and by whom.<sup>29</sup> Even the European powers attempted to regulate the Scramble for Africa’s economic and political colonization of the continent pursuant to the Berlin Conference of 1884–85.<sup>30</sup> This did not end well for either Africa or Europe, but in the end those powers knew that in order for conflict to be mitigated there must be order in the distribution of resources.<sup>31</sup>

Today we live in a much more globalized society where multilateral cooperation amongst nations is generally the paradigm, but wars over resources are not distant historical events. And if there has ever been a resource that nations would come to blows over, it is hydrocarbons.<sup>32</sup> The U.S. Geological Survey (“USGS”) conducted the most recent and extensive survey of the Arctic region in 2008.<sup>33</sup> The USGS found that the amount of hydrocarbons that are recoverable (meaning economically feasible to extract) from the Arctic Ocean floor amounted to a staggering sum.<sup>34</sup> It speculates that nearly 90 billion barrels of oil alone lay beneath the Arctic sea floor or approximately 13 percent of the recoverable oil reserves left in the world.<sup>35</sup> To compare, according to U.S. Energy Information Administration (“EIA”), Saudi Arabia has the second highest proven oil reserves in the world with around 268 billion barrels.<sup>36</sup> While the Arctic is not the next Arabian Peninsula, 90 billion barrels is no paltry amount when considering we are approaching peak oil production. The Arctic holds other hydrocarbons in great quantities as well.<sup>37</sup> According to USGS, 1.670 trillion cubic feet of natural gas and 44 billion barrels of natural gas liquid lay beneath the waning ice.<sup>38</sup> Also, while energy development is at the forefront of the Arctic inquiry, the prospect of plentiful fisheries is under discussion as well but in the pretext of conservation.<sup>39</sup> A “donut hole” is beginning to

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<sup>29</sup> See *id.* at 74.

<sup>30</sup> Adam Hart-Davis et al., *HISTORY: THE DEFINITIVE VISUAL GUIDE 360* (Angeles G. Guerrero et al. eds., 2010).

<sup>31</sup> See generally *id.* at 360–61.

<sup>32</sup> Borgerson, *supra* note 1, at 67; U.S. GEOLOGICAL SURVEY, *supra* note 5.

<sup>33</sup> U.S. GEOLOGICAL SURVEY, *supra* note 5.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Venezuela*, U.S. ENERGY INFO. ADMIN.,

<https://www.eia.gov/beta/international/analysis.cfm?iso=VEN> (last updated Nov. 25, 2015).

<sup>37</sup> See U.S. GEOLOGICAL SURVEY, *supra* note 5.

<sup>38</sup> *Id.*

<sup>39</sup> See U.S. DEPT OF STATE, ARCTIC NATIONS SIGN DECLARATION TO PREVENT UNREGULATED FISHING IN THE CENTRAL ARCTIC OCEAN (July 16, 2015), available at <http://www.state.gov/r/pa/prs/ps/2015/07/244969.htm>; see also Ed Struzik, *Melting Sea Ice Could Lead*

emerge in the ice of the central Arctic Ocean allowing fisherman to pass into during the summer months.<sup>40</sup> Although the research is by no means conclusive, a cursory survey of the region reveals Arctic cod and snow crab around the border regions, but it is speculated that with warming waters comes a migration of new, commercially viable species.<sup>41</sup> But with commercial fishing comes a myriad of issues among which include unregulated commercial fishing and threats to crucial food sources for indigenous tribes.<sup>42</sup> In fact, many of the Arctic's bordering regions have seen commercial fishing outfits chase species like redfish and round-nosed grenadier to the brink of extinction in those areas.<sup>43</sup> This has lead Arctic nations like the United States to push for joint resolutions with other states to begin discussing and regulating this environment.<sup>44</sup>

Despite the fact that at this time there is no real plan for how to approach dividing up these resources, countries are still hedging their bets and making claims.<sup>45</sup> Russia has even planted flags at the bottom of the Arctic Ocean.<sup>46</sup> While these gestures have not been given legitimacy by other nations, Russia is not breaking any international laws or guidelines, because there are none.<sup>47</sup> The Arctic is a "legal no man's land" with neither restrictions for particular acts nor redressability for violations through binding international law.<sup>48</sup>

### *C. A Brief Overview of Maritime Law and the United Nations Convention on the Law of the Sea*

The Arctic region is certainly a legal question mark, but while there may be no legal framework with teeth, there is a body of law that could serve as a suitable governance structure for future developments: the Law of the Sea. Maritime law is an ancient legal doctrine dating back as far as 3000 B.C.E., with the early shipping routs between India and Babylon.<sup>49</sup> In the second century, the Roman Empire was one of the first government entities to adopt a legal theory behind maritime law with the doctrine of *mare liberum*

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to *Pressure on Arctic Fishery*, YALE ENV'T 360 (May 10, 2012), [http://e360.yale.edu/feature/melting\\_sea\\_ice\\_could\\_lead\\_to\\_pressure\\_on\\_arctic\\_fishery/2526/](http://e360.yale.edu/feature/melting_sea_ice_could_lead_to_pressure_on_arctic_fishery/2526/); see also S.J. Res. 17, 110th Cong. (2008).

<sup>40</sup> Struzik, *supra* note 39.

<sup>41</sup> *Id.*

<sup>42</sup> See *id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Struzik, *supra* note 39.

<sup>45</sup> Borgerson, *supra* note 1, at 63.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 74.

<sup>49</sup> Jeffrey A. Levick, *From Sovereignty to Fishing Rights: The Historical Evolution of the Law of the Territorial Sea*, 3 DIG. INT'L L. 36, 36 (1996).

– the theory that the world’s oceans are freely navigable.<sup>50</sup> However, it was not until the sixteenth century that the modern theory of the “territorial sea” began to evolve into what we know of maritime law today, where nations enjoy sovereign zones surrounding their coastal waters up to the international limit – usually 12 miles – while the high seas remain free.<sup>51</sup>

As late as the twentieth century, however, there was no formality in the law of the sea; rather, it was a law of custom.<sup>52</sup> In an effort to create uniformity in this ancient doctrine, the United Nations convened the Law of the Sea Convention in 1958.<sup>53</sup> What was created through subsequent conventions would become UNCLOS. It outlined a comprehensive list of topics needed for formal governance reflecting classic principles of maritime law as well as addressing the needs of an economically and politically globalized world.<sup>54</sup> UNCLOS provides a general structure for maritime law by continuing the theory of the territorial seas,<sup>55</sup> but it also defines the need for EEZs where coastal states enjoy “sovereign rights for the purpose of exploring and exploiting . . . the natural resources” of a territory up to, but not in excess of, 200 nautical miles off their coasts.<sup>56</sup>

Beyond economic development, UNCLOS also pushes resource management and conservation “of the living resources of the high seas” in order to “take measures which are designed, on the best scientific evidence available . . . to maintain or restore populations of harvested species.”<sup>57</sup> Similarly, UNCLOS governs the non-living resources of the oceans as well “to foster healthy development of the world economy and balanced growth of international trade” for the “orderly, safe and rational management of the resources of the Area . . . in accordance with sound principles of conservation [] [and] the avoidance of unnecessary waste . . . .”<sup>58</sup> Finally, and perhaps most importantly for our purposes, UNCLOS provides a judicial structure. The convention describes the oceans and its resources as “the common heritage of mankind,” but this is by no means an invitation for nations to engage in unchecked development.<sup>59</sup> By its very nature, what belongs to all mankind cannot belong to one state, and any action by any one state that purports to hoard that which belongs to all mankind is given no recognition

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<sup>50</sup> *Id.*

<sup>51</sup> *See id.* at 42, 48.

<sup>52</sup> *See generally id.* at 36-37.

<sup>53</sup> *Id.* at 46.

<sup>54</sup> *Id.*

<sup>55</sup> *See generally* United Nations Convention on the Law of the Sea pt. II, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

<sup>56</sup> *Id.* art. 56(1)(a), 57.

<sup>57</sup> *Id.* art. 119.

<sup>58</sup> *Id.* art. 150; *see also id.* pt. XII (detailing the preservation of the marine environment).

<sup>59</sup> *Id.* art. 136.



by international law.<sup>60</sup> Indeed, this would be a harm inflicted on the world at large. However, UNCLOS provides its signatories with a way to settle their disputes through either arbitration or tribunal before the International Seabed Authority.<sup>61</sup> The convention also provides UNCLOS signatories with automatic membership status, voting power, the ability to participate in executive offices.<sup>62</sup>

This brief overview – which by no means captures the entire breadth of UNCLOS – gives at least some indication of the types of issues facing the Arctic Ocean. UNCLOS is comprehensive in scope, but perhaps the most essential thread running throughout nearly every article of the Law of the Sea is the need for cooperation amongst states.<sup>63</sup> Governing the high seas is not the job of one nation, but rather requires responsible action by both coastal and land-locked countries alike. We do not need a document to teach us the importance of our oceans both environmentally and economically, but in order to preserve it we must encourage the use of law in its administration.

### III. CHINA: ECONOMIC NEEDS AT HOME AND ARCTIC OFFERINGS

#### *A. The Veracious Appetite of the World's Workbench*

The combination of the Arctic's resource rich territories coupled with the lack of international governance structures makes for a volatile combination. Without oversight, clashes over resources could ensue amongst the great economic powers. As the largest economic producers in the world lay claim to the last major energy sources around the globe, China must seek out new mineral and hydrocarbon reserves. China boasts the fastest growing and second largest economy in the world, accounting for an astonishing one-third of the total growth in global commerce so far this decade as compared to 17 percent by the United States.<sup>64</sup> This is largely due to China's unparalleled success with its export-led growth model where domestic and foreign corporations invest in and utilize China's cheap labor

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<sup>60</sup> See *id.* art. 137.

<sup>61</sup> See generally *id.* annex V, VI.

<sup>62</sup> See generally *id.* art. 159, 160.

<sup>63</sup> See generally *id.* pt. II, V, VII, XI.

<sup>64</sup> Chris Matthews, *Will the Crisis in China Sink the U.S. Economy?*, FORTUNE (Sept. 2, 2015, 7:21 AM), <http://fortune.com/2015/09/02/china-crisis-us-economy/>; Euromonitor Research, *China - Approaching the End of Export-Led Growth Story?*, EUROMONITOR INT'L (Mar. 16, 2014), available at <http://blog.euromonitor.com/2014/03/china-approaching-the-end-of-export-led-growth-story.html>.

force and industrial infrastructure to manufacture their goods after which they can then ship around the globe.<sup>65</sup>

Because of this, China has been aptly named the “world’s workbench,” and while a multitude of factors have contributed to this perfect storm of economic excellence, it could not have been achieved without unparalleled energy consumption to support its industrial complex.<sup>66</sup> In 2011, China became the largest energy consumer in the world while in that same year it became the global leader in electricity production.<sup>67</sup> Thereafter in 2014, China became the largest net importer of petroleum, and herein lays Beijing’s greatest challenge for continued future growth: resource security.<sup>68</sup> Simply put, China’s economy is growing so quickly that its production is outstripping its ability to import and consume energy.<sup>69</sup>

China, like the United States, is a nation plentiful in coal with the third largest coal reserves in the world.<sup>70</sup> In 2012, coal accounted for 66 percent of China’s energy needs, but although it provides the country with an abundant source of energy, the nation’s heavy reliance on coal has wreaked havoc on its environment, contributing to the smog-laden cities for which China is quickly becoming notorious.<sup>71</sup> Subsequently, China is looking to diversify its energy base toward cleaner, more efficient energy sources such as oil and natural gas, but China’s petroleum reserves are woefully outmatched by its energy needs.<sup>72</sup> Beijing estimates that by 2020, the Chinese economy will require 600 million tons of crude oil per year, which is over three times China’s production capacity.<sup>73</sup> Exacerbating this further is the fact that the United States, Russia, and the European Union already claim most of the world’s largest oil reserves, and China’s claims in Iraq are evaporating along with Baghdad’s ability to maintain stability.<sup>74</sup> Although China does trade with some pariah nations that western states refuse to deal with, such as Iran, Beijing is still struggling for energy security.<sup>75</sup> With the tantalizing prospects

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<sup>65</sup> Euromonitor Research, *supra* note 64.

<sup>66</sup> See generally *China: International Energy Data and Analysis*, U.S. ENERGY INFO. ADMIN., [http://www.eia.gov/beta/international/analysis\\_includes/countries\\_long/China/china.pdf](http://www.eia.gov/beta/international/analysis_includes/countries_long/China/china.pdf) (last updated May 14, 2015).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Countries with the Biggest Coal Reserves*, MINING-TECHNOLOGY.COM (Nov. 21, 2013), <http://www.mining-technology.com/features/feature-the-worlds-biggest-coal-reserves-by-country/>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*; see also Peter S. Goodman, *Big Shift in China’s Oil Policy*, WASHINGTON POST (July 13, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/12/AR2005071201546.html>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See generally JOHN W. GARVER, *CHINA AND IRAN: ANCIENT PARTNERS IN A POST-IMPERIAL WORLD* (University of Washington Press 2006).

of massive oil reserves and other resources in the Arctic, Beijing is positioning itself as a future benefactor in the region.<sup>76</sup>

### *B. Beijing's Arctic Strategy*

Given China's shortage of domestically produced hydrocarbon reserves, it should come as no surprise that Beijing has had a long-time, strategic interest in the Arctic region.<sup>77</sup> To become a valid player in the region, it must gain access to scientific insight and the international institutions that will come to govern the region. Without any predisposed cultural or political connections to the Arctic, Beijing must demonstrate a valid connection to the region. In order to do this, China is ensuring its position in the Arctic in three crucial ways by (1) conducting climatological research, (2) investing in resources bilaterally through its connections to Arctic states, and (3) opting for permanent membership on the Arctic Council.

The Chinese have not only been slowly ratcheting up their use of the Northern Sea Rout for commercial purposes, but Beijing has made it an important point to conduct research in the Arctic.<sup>78</sup> This has been achieved in two primary forms. First, Beijing has funded several research missions to the region aimed at climatological research, which have resulted in an increasing amount of articles published by Chinese scholars regarding both the environmental and strategic importance of the Arctic.<sup>79</sup> China has characterized itself as a "near-Arctic state" because, although it does not share a border with the region, it is directly affected by global climate change.<sup>80</sup> This is understandable considering China's coastline measures over 9,000 miles in length, and the vast majority of its industrial infrastructure is housed on the coast.<sup>81</sup> Beijing also argues that it has an undeniable place at the table, not only because of its sheer size and economic

<sup>76</sup> See generally *id.*

<sup>77</sup> Olga Alexeeva & Frédéric Lasserre, *China and the Arctic*, ARCTIC YEARBOOK 2012, Jan. 2012, at 80, 81-82, available at [http://www.researchgate.net/profile/Olga\\_Alexeeva/publication/259042084\\_China\\_and\\_the\\_Arctic/links/0c960529ce2575a172000000.pdf](http://www.researchgate.net/profile/Olga_Alexeeva/publication/259042084_China_and_the_Arctic/links/0c960529ce2575a172000000.pdf).

<sup>78</sup> See *id.* at 81-82; see also Guschin, *supra* note 4.

<sup>79</sup> Alexeeva & Lasserre, *supra* note 77, at 81; see also Tang Guoqiang, *Arctic Issues and China's Stance*, CHINA INST. OF INT'L STUDIES (Mar. 4, 2013), [http://www.cis.org.cn/english/2013-03/04/content\\_5772842.htm](http://www.cis.org.cn/english/2013-03/04/content_5772842.htm).

<sup>80</sup> Guschin, *supra* note 4.

<sup>81</sup> THE WORLD FACTBOOK, CENT. INTELLIGENCE AGENCY (last visited Apr. 20, 2016), <https://www.cia.gov/library/publications/the-world-factbook/fields/2060.html>.

power, but also because it is a major player in shaping the future of the environment.<sup>82</sup>

Beijing's increasing investment in icebreaker technology, which allows research vessels to penetrate further into the Arctic's interior, is China's second form of interest in the Arctic.<sup>83</sup> In 1993, China purchased from Ukraine a Russian-made icebreaker ship equipped with advanced navigation and weather equipment as well as a helicopter launch pad, and in 2010, China sent the icebreaker to the Arctic to aid one of its research teams.<sup>84</sup> Furthermore, in 2011 alone, the Chinese government invested \$300 million to build a modern icebreaker.<sup>85</sup> Government officials say that they intend to conduct polar expeditions for more than 200 days annually with these two research vessels.<sup>86</sup>

Beijing has been increasing its economic presence in the region as well.<sup>87</sup> China is not only growing its economic output, but it is also developing the size of its infrastructure.<sup>88</sup> This means building more factories and skyscrapers at unprecedented rates, and this requires vast amounts of steel. China is by far the world leader in steel production.<sup>89</sup> In 2014, China produced more steel than the next sixty-five leading steel-producing countries in the world combined, totaling an output of over 822 million tons of steel.<sup>90</sup> Steel requires iron ore, and to maintain its mineral security China must diversify its importation sources, which it has done in the Arctic.<sup>91</sup> State-owned enterprises such as Sinosteel and China Communication Corporation have invested heavily in the Isua Iron Mine in Greenland, which is expected to produce 15 million tons of iron ore starting in 2015.<sup>92</sup>

Currently, there is no one international governance structure in the Arctic to handle environmental, political, and legal issues, like the U.N. or the IMF do elsewhere. However, this may be the future function of the Arctic Council, which recently met in late 2015 and appointed the United

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<sup>82</sup> Matthew Willis & Duncan Depledge, *How We Learned to Stop Worrying About China's Arctic Ambitions: Understanding China's Admission to the Arctic Council, 2004-2013*, in HANDBOOK OF THE POLITICS OF THE ARCTIC, 388, 394 (Leif C. Jensen & Geir Honneland eds., 2015).

<sup>83</sup> Alexeeva & Lasserre, *supra* note 77, at 82.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Guschin, *supra* note 4.

<sup>88</sup> *Id.*

<sup>89</sup> See WORLD STEEL ASS'N, STEEL STATISTICAL YEARBOOK 2015 (Oct. 2015) available at <http://www.worldsteel.org/dms/internetDocumentList/bookshop/2015/Steel-Statistical-Yearbook-2015/document/Steel%20Statistical%20Yearbook%202015.pdf>.

<sup>90</sup> *Id.*

<sup>91</sup> Guschin, *supra* note 4.

<sup>92</sup> *Id.*

States as the new Chair of the Council.<sup>93</sup> As of now, the primary function of the Arctic Council is to address climate-change issues as well as rights of the indigenous tribes of the Arctic.<sup>94</sup> Voting power rests with the eight current member states – Russia, Canada, Finland, Sweden, Norway, Denmark, Iceland, and the United States.<sup>95</sup> China, on the other hand, is only an observer state with no voting rights and, therefore, no substantive power.<sup>96</sup>

To better achieve its goals, Beijing realizes the importance of becoming a full member in the future, and its lack of membership has not stopped China from using its substantial economic power as a “near-Arctic” state to better align themselves with other Arctic nations.<sup>97</sup> Beijing has been able to make a strong bid for becoming a full member by establishing “bilateral economic contacts” with some of the smaller Arctic member-states.<sup>98</sup> One of China’s primary interests in the region is driven by the need for greater food security, and the fisheries around Greenland and Iceland have proven themselves valuable to Sino-Icelandic and Denmark relations.<sup>99</sup> In exchange for access to their fisheries, the Chinese have agreed to provide much needed capital infusions to these smaller members of the Council to help “ensure support for [China’s] permanent membership.”<sup>100</sup> “In 2010, China provided Iceland with a \$500 million-plus currency swap,” and \$740 million to Denmark in energy and agricultural assistance.<sup>101</sup> This appears to be paying off with Denmark and Iceland, and Sweden and Norway have declared an interest in “discussing China’s future role on the Council.”<sup>102</sup> However, while Beijing stands to gain big if it is given both a seat at the decision-making table and rights to the wealth of Arctic resources, without an overarching governance structure we can only speculate how nations will maneuver themselves in making a claim.

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<sup>93</sup> *History of the Arctic Council*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/arctic-council> (last updated Sept. 16, 2015).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Observers*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers> (last updated Feb. 12, 2016).

<sup>97</sup> See Guschin, *supra* note 4.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

#### IV. NERVE-RACKING: INSIGHTS INTO CHINA'S REGIONAL AND INTERNATIONAL POLICIES

It is clear that the melting Arctic ice is not going to impact China alone. Rising tides drastically impact coastal nations, and the revelation of untapped resources can have major consequences on the world market. Thus, the debate is not what potential gains states can obtain, but rather what their desired outcomes are and how they will be achieved. In this way China occupies a pivotal, yet precarious place in the development of the Arctic. China is an aspiring global power that has seen unprecedented growth in the last thirty-five years.<sup>103</sup> As a consequence, China has seen rapid modernization, and mass migrations from the interior to the coastal cities have created a cultural shift from being primarily an agricultural nation to an industrial one.<sup>104</sup> Furthermore, China has become a more active participant in international politics.<sup>105</sup> To sustain its economic and diplomatic rise, China must both diversify its resource base and maintain its status in a global community, where interactions are built on long-established norms.<sup>106</sup>

However, while much of the West adheres to these international norms (mainly because western nations created them), China is different. China is a relatively young industrial power that sees itself as an outsider forced to conform to the Westphalian international system it had no hand in creating.<sup>107</sup> It is this very mentality that causes speculation about China's desired outcome in the Arctic. China's predominant motivations in the region are not unusual – concerns about global climate change and the need for mineral stores, food reserves, and especially energy security – but the lengths Beijing is willing to go lead some to believe that China is preparing to make more assertions in the Arctic. The most telling way to gain insight into this issue is to look at (1) China's aggressive interactions with its neighbor-states, (2) how it regards the existing international governance structures and norms, and (3) Beijing's theory binding itself to legitimate claims in the Arctic.

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<sup>103</sup> See MICHAEL B. YAHUDA, *THE INTERNATIONAL POLITICS OF THE ASIA PACIFIC* 270-90 (Michael Leifer ed., Routledge 3d rev. ed. 2011).

<sup>104</sup> See *id.* at 271; See also Kam Wing Chan, *China, Internal Migration*, in *THE ENCYCLOPEDIA OF GLOBAL MIGRATION* 1, 1-46. (Peter Bellwood & Immanuel Ness eds., Blackwell Publishing 2011).

<sup>105</sup> *Id.* at 284.

<sup>106</sup> See generally JOSEPH S. NYE, *UNDERSTANDING INTERNATIONAL CONFLICTS: AN INTRODUCTION TO THEORY AND HISTORY* (Vikram Mukhija ed., 7th ed. 2009).

<sup>107</sup> *Id.*

*A. Multiplicity: China's Territorial Disputes*

The Arctic is not the first place where the Chinese government has found itself in conflict with other nations over “disputed” land, particularly with its neighbor states.<sup>108</sup> Over the past sixty years, Beijing has been involved in multiple territorial disputes, and while the Chinese government has no control over these lands, it asserts itself – sometimes militarily – in these regions.<sup>109</sup> These disputes are focused primarily in the Himalayas and in the South and East China Seas.<sup>110</sup> In the West, China claims Arunachal Pradesh, a massive area currently controlled by India.<sup>111</sup> China also won a brief war with India over land next to Kashmir that India still lays claim to.<sup>112</sup>

More recent headlines show China’s startling claims over tiny, deserted island clusters in the South and East China Seas.<sup>113</sup> The most immediately dangerous dispute is with Japan, America’s primary ally in the region, over territory known in China as the Diaoyu Islands and in Japan as the Senkaku Islands, which are speculated to be rich in oil and natural gas.<sup>114</sup> Although China claims these islands have always been part of its territory, in 2012 Japan nationalized the islands when it purchased the land from its private owner.<sup>115</sup> Consequently, the Chinese appear to be saber-rattling by sending naval patrols and military jet fighters on fly-by missions around the islands.<sup>116</sup> Moreover, China has developed a missile defense system that covers the islands and requires identification from vessels that pass into the region.<sup>117</sup> This situation is precarious because Japan and the disputed islands are under the U.S. military umbrella.<sup>118</sup> America’s largest naval group, the Seventh Fleet, is based in Japan and is viewed by China as a national security threat.<sup>119</sup> Japan’s acquisition of the islands threatens to sour relations between the two largest powers in the region and also threatens to create a rift in the Sino-American relationship with the potential for heightened military escalation.<sup>120</sup>

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<sup>108</sup> See THE ECONOMIST, *supra* note 7; see also YAHUDA, *supra* note 103, at 287.

<sup>109</sup> THE ECONOMIST, *supra* note 7; see also YAHUDA, *supra* note 103, at 287.

<sup>110</sup> THE ECONOMIST, *supra* note 7; see also YAHUDA, *supra* note 103, at 287.

<sup>111</sup> THE ECONOMIST, *supra* note 7; see also YAHUDA, *supra* note 103, at 293.

<sup>112</sup> THE ECONOMIST, *supra* note 7; see also YAHUDA, *supra* note 103, at 293.

<sup>113</sup> THE ECONOMIST, *supra* note 7.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See *id.*

<sup>119</sup> Lucas Tomlinson, *US Navy Deploys Several Ships to South China Sea as Tensions Rise*, FOX NEWS (Mar. 4, 2016), <http://www.foxnews.com/world/2016/03/04/us-navy-deploys-several-ships-to-south-china-sea.html>.

<sup>120</sup> THE ECONOMIST, *supra* note 7.

Meanwhile, territorial disputes in the South China Sea are even more complex. It is suspected that the South China Sea is rich in hydrocarbons making it a tempting source for Chinese drilling exploration, which has already started in the Paracel Islands.<sup>121</sup> However, Vietnam also claims this territory as its own.<sup>122</sup> The Spratly Islands are another source of conflict involving China, Vietnam, Brunei, and Malaysia, who all claim control of the island chain.<sup>123</sup> The Chinese navy has gone as far as physically expelling the Philippines from the surrounding reefs.<sup>124</sup> China's entire show of force in the region is based around a map dating from the 1940s showing the now infamous "Nine Dash Line" around much of the South China Sea, and according to Beijing, everything within the line rightfully belongs to China.<sup>125</sup>

Of course, all of this says nothing about the long-nationalized region of Tibet or the largely Muslim province of Xinjiang, both of which profess their independence from China.<sup>126</sup> With China's military recognition system in the east and forceful encroachment in the south, some nations have accused Beijing of using "salami slicing tactics" to push its maritime borders further and backing its expansion with an expanding navy and air force.<sup>127</sup> While these territorial disputes and nationalized lands make it unsurprising that nations like Japan, Vietnam, and even the United States are leery about the rise of China, it is also telling about China's regard for the international system.

### *B. (Dis)regard: China's Lack of Adherence to UNCLOS and International Institutions*

China is a signatory to UNCLOS, and although China has had no hand in creating the international system we know today, its ratification of the convention must symbolize acceptance of its model.<sup>128</sup> After all, Beijing might be unsatisfied to some degree with the Western system of international relations, but the People's Congress and the Standing

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See *Xinjiang Territory Profile – Overview*, BBC NEWS (Oct. 14, 2014),

<http://www.bbc.com/news/world-asia-pacific-16860974>; see also *Is Tibet a Country?*, FREE TIBET, <http://freetibet.org/about/legal-status-tibet> (last visited Apr. 21, 2016).

<sup>127</sup> THE ECONOMIST, *supra* note 7.

<sup>128</sup> *United Nations Multilateral Treaties, Chapter XXI, Part 6: United Nations Convention on the Law of the Sea*, UNITED NATIONS TREATY COLLECTIONS, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en) (last visited Apr. 22, 2016).



Committee, who are pragmatic and fearful of unnecessary entanglements, traditionally prefer bilateral rather than multilateral international relations.<sup>129</sup> From this it might be safe to infer that Beijing sees something desirable in joining UNCLOS. It at least shows a willingness to be a team player – even if begrudgingly – and a desire to be involved in widely accepted international institutions, but where China utilizes these benefits it has also taken advantage of the convention’s weaknesses.<sup>130</sup>

UNCLOS lacks substantial teeth to enforce its own measures.<sup>131</sup> The convention is very similar to American uniform laws in the sense that it takes long-standing maritime practices, such as the territorial sea doctrine (giving coastal nations sovereign waters while keeping the high seas open), and also creates a governance structure to deal with legal, environmental, scientific, and resource-related issues.<sup>132</sup> But what is a system of laws if it can be broken with little consequence?

Because of this inherent lack of enforcement, China may invoke the convention when it is convenient and ignore it when it sees fit.<sup>133</sup> To demonstrate, one need only look to China’s boundary waters, where the United States has a substantial presence. The Navy’s largest fleet is stationed there, and although this frustrates China’s expansionist goals, the United States is adhering to what has been deemed lawfully acceptable by centuries of maritime custom.<sup>134</sup> The United States is using and protecting the sovereign waters of its allies, Japan, Taiwan, and South Korea, and it is also patrolling international waters.<sup>135</sup> Despite this, China calls foul; invoking an exaggerated definition of its EEZ and calling American military surveillance illegal.<sup>136</sup> However, this activity cannot be considered illegal because the Navy is not interfering with China’s economic exploits in the region.<sup>137</sup> In fact, UNCLOS allows these activities in the EEZs of coastal nations.<sup>138</sup>

<sup>129</sup> See Scott Harold & Alireza Nader, *China and Iran: Economic, Political, and Military Relations*, RAND CTR. FOR MIDDLE EAST POLICY (2012) [http://www.rand.org/content/dam/rand/pubs/occasional\\_papers/2012/RAND\\_OP351.pdf](http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP351.pdf); see also Dan Blumenthal & Michael Mazza, *Why to Forget UNCLOS*, THE DIPLOMAT (Feb. 17, 2012), <http://thediplomat.com/2012/02/why-to-forget-unclos/>.

<sup>130</sup> See generally Howard W. French, *China’s Dangerous Game*, THE ATLANTIC (Nov. 2014) <http://www.theatlantic.com/magazine/archive/2014/11/chinas-dangerous-game/380789/>; see also Blumenthal & Mazza, *supra* note 129.

<sup>131</sup> *The Global Oceans Regime*, COUNCIL ON FOREIGN RELATIONS (June 19, 2013) <http://www.cfr.org/oceans/global-oceans-regime/p21035>.

<sup>132</sup> See generally UNCLOS, *supra* note 55, pt. II.

<sup>133</sup> See *id.*; see also COUNCIL ON FOREIGN RELATIONS, *supra* note 131.

<sup>134</sup> *History*, COMMANDER, U.S. 7TH FLEET, <http://www.c7f.navy.mil/Subs-and-Squadrons> (last visited Apr. 21, 2016); see also Blumenthal & Mazza, *supra* note 129.

<sup>135</sup> See Blumenthal & Mazza, *supra* note 129.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> See UNCLOS, *supra* note 55, art. 58.

Furthermore, China's own exploits in the East and South China Seas can be considered illegal acts under UNCLOS. China is attempting to shut down the use of these maritime territories by creating recognition systems in the East China Sea over Japan's Senkaku Islands and forcefully expelling the Philippines from islands in the South China Sea.<sup>139</sup> This is a direct violation of Part II, § 3(A)(17), which states, "all States . . . enjoy the right of innocent passage through the territorial sea."<sup>140</sup> Innocent passage is defined as any movement – economic or military – in these regions that is not "prejudicial to the peace, order and security of the coastal State if in the territorial sea."<sup>141</sup> While Beijing could similarly point to this provision to prop up its own counter analysis of the situation, these islands and surrounding waters are not "territorial" as defined in Part II, § 2 of UNCLOS.<sup>142</sup> These territories are disputed, and if the Chinese are serious about adhering to and enforcing the provisions of UNCLOS, its representatives should utilize the International Seabed Authority to arbitrate these disputes rather than expelling nations with equally viable claims at gunpoint.

### *C. Binding the Arctic to the Middle Kingdom*

What does this mean for China's future stake in the Arctic? Since China does not have a geographic or cultural claim to the Arctic, it must bolster its claims to the Arctic in other ways. Arctic nations, especially those with a geological connection to the Arctic continental shelf like the United States, Russia, and Canada, already maintain EEZs stretching up to 200 miles off their coasts.<sup>143</sup> These nations can also directly claim national security issues and social concerns related to tribal populations that call the Arctic Circle home.<sup>144</sup> China does not have this luxury. Although China cannot claim direct national security concerns, Beijing's ties are more general. We have already discussed the localized impacts global warming has on China's coastal infrastructure as well as its greater use of icebreaker technology to facilitate Arctic research.<sup>145</sup> We have also seen that China is establishing beneficial relationships with the smaller Arctic nations by exchanging cash infusions for mineral and fishing rights.<sup>146</sup>

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<sup>139</sup> THE ECONOMIST, *supra* note 7.

<sup>140</sup> UNCLOS, *supra* note 55, art. 17.

<sup>141</sup> *Id.* art. 19.

<sup>142</sup> *Id.* art. 3, 5, 6.

<sup>143</sup> Borgerson, *supra* note 1, at 72.

<sup>144</sup> *Id.*

<sup>145</sup> See Alexeeva & Lasserre, *supra* note 77, at 82.

<sup>146</sup> See Guschin, *supra* note 4.

Beijing has a substantive claim to the Arctic by utilizing the rhetoric of UNCLOS to show that the northern seas and its resources are the “common heritage of mankind.”<sup>147</sup> The language speaks of equity; however, some Chinese scholars and military leaders are expressing more radical views in publications (which would likely not be made public unless condoned by the editorial hand of the Chinese government) that China should begin asserting its claims in the Arctic.<sup>148</sup> However, some scholars are not convinced that China is going to start planting flags on the Arctic sea floor anytime soon. First, China has more to gain developing its Arctic claims through bilateral and multilateral diplomacy with other Arctic states rather than unilaterally action.<sup>149</sup> China cannot afford to sour relations with major trading partners like the United States if it is to have a voice in the future of the Arctic. Second, China’s behavior in the South and East China Seas are not indicative of future policies in the Arctic.<sup>150</sup> China’s assertions in its coastal waters are built upon cultural and geographic ties to those disputed territories, but without similar claims in the Arctic, Beijing must go about its business in a different way to avoid upsetting international ties.<sup>151</sup>

This Note is by no means a call to arms against the rise of China, nor is it an assumption that China will continue acting unreasonably with respect to the Arctic. However, it should be understood that China’s disregard for widely accepted international paradigms and the willingness to use force against its neighbor states is cause for caution. The Arctic is a legal no-man’s land, and to use the argument that the high seas are the common heritage of mankind can easily excuse unchecked exploration by an aggressive state actor in dire need of the very resources the Arctic has to offer. Beijing certainly stands to gain more by being a team player, and its pragmatism in other areas of international relations demonstrates as much. Furthermore, its lack of cultural and territorial connections with the Arctic could lead China to go about making claims in a more rational fashion. In this same way, however, China is failing to demonstrate that it is unwilling to go after disputed regions laden with precious resources by more forceful means. It is a risk that need not be taken when we have at our disposal a viable set of laws in UNCLOS and a framework of international leadership.

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<sup>147</sup> Alexeeva & Lasserre, *supra* note 77, at 83 (citing Qian Wang, *Arctic Research Set to be Beefed Up*, CHINA DAILY, [http://usa.chinadaily.com.cn/2010-05/06/content\\_11018535.htm](http://usa.chinadaily.com.cn/2010-05/06/content_11018535.htm) (last updated May 6, 2010)).

<sup>148</sup> *Id.* at 83-84.

<sup>149</sup> *Id.* at 85-86.

<sup>150</sup> *Id.* at 85.

<sup>151</sup> THE ECONOMIST, *supra* note 7.

## V. AN OPPORTUNITY FOR THE FUTURE: INTERNATIONAL LEGAL STRUCTURES AND U.S. LEADERSHIP WILL BE THE KEY

At this point, beyond the twelve-mile sovereign territories and the larger EEZs no one owns the Arctic. While it remains an open question as to how exactly the global community will govern this opening frontier, it is understood that the world will have to deal with an ice-free Arctic in the near future. The Arctic needs law and order, or the result will be unchecked underwater land grabs followed by resource disputes and ultimately a destroyed ecosystem, much like the rest of the world's oceans which have become over-fished waste depositories. It is a grim depiction of political, economic, and environmental turmoil. However, we can project how quickly the Arctic is thawing giving us a timetable for creating a set of laws to ensure that there will be no more harm than has already been done.

We cannot save this ecosystem in its current, dying state, but time is on our side to help it transition into a new one that is both healthy and helpful. Perhaps for the first time in our globalized world, we as a race know something is going to happen that will impact us all in the same way, and we can ensure a desired outcome by passing and enforcing laws. However, the whole structure could unravel if one major state actor undermines it, and China's aggressive behavior toward its neighbors and subversion of the current international system should raise caution amongst other nations. After all, breaking international norms is not illegal if there are no laws to enforce them. To this end, the Arctic region needs (1) a governing set of enforceable laws and (2) leadership in creating governance structures.

In our current international system, we utilize supranational organizations to govern certain international interests like economics and human rights, but we still desire to maintain our own national sovereignty. That is to say that we do not want to hand over our fundamental decision-making power to international organizations, and this same problem will affect who will make decisions in the Arctic.<sup>152</sup> There must be something to curb aggressive behavior by other nations. In this situation, traditional principles of property law simply will not suffice. Doctrines like the rule of capture and the prior appropriation theory will only result in political turmoil and a rapid depletion of resources.<sup>153</sup> Instead, we should use existing

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<sup>152</sup> See generally Luke Coffey et al., *True North: Economic Freedom of Sovereignty Must be at the Heart of the U.S. Chairmanship of the Arctic Council*, HERITAGE FOUND. (Apr. 1, 2015), <http://www.heritage.org/research/reports/2015/04/true-north-economic-freedom-and-sovereignty-must-be-at-the-heart-of-the-us-chairmanship-of-the-arctic-council>.

<sup>153</sup> See *Pierson v. Post*, 3 Cai. R. 175, 178 (N.Y. App. Div. 1805) (“[T]he mortal wounding of such beasts, by one not abandoning his pursuit, may, with the utmost propriety, be deemed possession of him; since, thereby, the pursuer manifests an unequivocal intention of appropriating the animal to

international institutions that are already equipped to deal with the political, economic, and environmental issues facing the Arctic, UNCLOS and the Arctic Council.

UNCLOS is a comprehensive set of laws that embraces centuries-old maritime norms while also addressing modern political, economic, and environmental issues.<sup>154</sup> The convention already contains a judicial framework where signatories can redress their grievances against other nations,<sup>155</sup> but in order to have the force of law it must have an established remedy. This can be achieved through any number of means including sanctions, revocation of resource rights, and monetary damages. However, despite UNCLOS's breadth of coverage of issues, it lacks the specificity found in modern statutes, making the Law of the Sea in its current form more a set of guidelines rather than rules. Along with its more general terms, UNCLOS should lay out detailed parameters for governing the Arctic's trade routes and resource developments. It should maintain strong environmental regulations while still respecting the native tribes that inhabit the Arctic Circle.

The Arctic Council would likely be the best equipped institution to carry out the Law of the Sea in the region. It is a "pre-made" governance body that already meets semi-regularly and has an internal structure of full and observing members.<sup>156</sup> For now, the Arctic Council is primarily a forum to discuss environmental issues, but it could be given this additional authority.<sup>157</sup> The Arctic Council could be converted to a branch of the U.N. and the Arctic states and members of the Security Council – including China – could be full members. Without China's involvement, the Arctic Council will be missing a vital piece of the conversation, especially on pollution emissions. Next, UNCLOS needs to be an enforceable set of laws with the International Seabed Authority acting as its judiciary, presided over by the Arctic states as permanent members of the tribunal with participation by rotating observer states. This will ensure that the Arctic states, which have the most immediate concerns, will have a permanent voice, and it allows observing states, even landlocked ones, to become part of the discussion, which is in keeping with the spirit of UNCLOS. Indeed, several of its provisions speak to the importance of allowing landlocked and developing

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his individual use, has deprived him of his natural liberty, and brought him within his certain control."); see also *Houston & Tex. Cent. Ry. Co. v. East*, 81 S.W. 279, 281 (Tex. 1904) ("[T]he use of the water . . . is within the right of the owner of the soil, whatever may be its effect upon his neighbor's wells and springs.").

<sup>154</sup> See generally UNCLOS, *supra* note 55.

<sup>155</sup> See *id.* art. 186-91.

<sup>156</sup> See ARCTIC COUNCIL, *supra* note 93; see also ARCTIC COUNCIL, *supra* note 96.

<sup>157</sup> See ARCTIC COUNCIL, *supra* note 93.

nations to have a voice in maritime law.<sup>158</sup> This will also help ensure that developing nations, like China, will have access to resources in the Arctic but in a highly structured fashion.<sup>159</sup>

However, all of this is highly theoretical. Of course this recommendation is meaningless if no one initiates the enforcement of UNCLOS. Without its implementation, the door is opened for the very problems this recommendation seeks to prevent. To accomplish this, some nation must take the initial leadership role and the United States is in the best position to do so. The United States is unquestionably the hegemonic power in the world with the most international clout. The United States is a military and economic leader, a permanent member of the Security Council, one of the Arctic states, and is the current Chair of the Arctic Council.<sup>160</sup> These factors place the United States in the best position to touch off the creation of Arctic law. However, the United States is not a signatory to UNCLOS.<sup>161</sup> America's absence from the treaty hinders any future leadership in several ways, but the most important factor is that the United States cannot redress grievances against other UNCLOS member-states as long as it is not a member as well.

To be an effective leader in the Arctic's future, the United States must ratify UNCLOS and become a signatory. Some argue that this is a moot point, especially in regards to curbing China's aggressive behavior toward its neighbors and the U.S. military presence in the East China Sea, and that the most effective way to deal with Beijing is for the United States to continue reassuring its regional allies and maintain military pressure in the East China Sea.<sup>162</sup> Also, some right wing American groups complain that ratifying UNCLOS would be tantamount to giving away America's economic prospects in the Arctic altogether.<sup>163</sup>

These concerns are misplaced. The Arctic is a region that is untested by international law, and even with the United States spearheading the development of international law in the region, it is unlikely to alienate Beijing. China views the Arctic as a region that belongs to all nations, not just the Arctic states. If the United States brings Beijing to the negotiation table instead of pushing China out, it would create the opportunity for joint success without the need for a military presence. Furthermore, the American right-wing view is too narrowly focused. It forgets that the United States

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<sup>158</sup> UNCLOS, *supra* note 55, art. 148.

<sup>159</sup> *Id.*

<sup>160</sup> *U.S. Chairmanship of the Arctic Council*, U.S. DEP'T OF STATE, <http://www.state.gov/e/oes/ocns/opa/arc/uschair/> (last visited Apr. 22, 2016).

<sup>161</sup> UNITED NATIONS TREATY COLLECTIONS, *supra* note 128.

<sup>162</sup> See Blumenthal & Mazza, *supra* note 129.

<sup>163</sup> See Coffey et al., *supra* note 152.

maintains an incredibly broad economic base around the globe and also that the United States already has an EEZ above the Arctic Circle through Alaska.<sup>164</sup> The United States would not be left out of the discussion or lose any rights. Finally, the Arctic issue must be looked at through a global lens. The world must be concerned about resource preservation rather than unchecked accession of wealth to the exclusion of others, and the only way this is to be achieved is to have an international governance structure that addresses Arctic issues.

## VI. CONCLUSION

No matter the fate of the Arctic Circle, China is a lynchpin in its future. China's unparalleled economic growth and consumption, the future impact of rising tides on its coastal industrial centers due to the melting poles, and its ever-increasing need for energy security ensure that it will be at the negotiation table for years to come. In this way, China's needs and concerns are not unlike those of the United States and other industrialized western nations; however, its track record of aggressive behavior toward its neighbors and undermining international law continue to make its future intentions in the Arctic suspect. Beijing's interest in the region is apparent from its push for scientific research, its increased utilization of the Northern Sea Route, and its involvement with smaller Arctic states. However, these challenges are not without solutions. The Arctic is currently a lawless territory, but aggressive behavior can be curtailed by focused guidance from the United States and enforceable legal institutions like UNCLOS and the Arctic Council. This is the best way to ensure that some good will come from our failure to restrain the progress of global climate change.

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<sup>164</sup> See *U.S. Maritime Limits & Boundaries*, NOAA OFFICE OF COAST SURVEY, <http://www.nauticalcharts.noaa.gov/csdl/mbound.htm> (last updated Sept. 13, 2013).